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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,443	03/31/2004	George L. Sesser	737-261	3782

23117 7590 02/10/2006

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ARLINGTON, VA 22203

EXAMINER
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NGUYEN, DINH Q

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 02/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/813,443		SESSER ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Dinh Q. Nguyen		3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 December 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 28 and 30-68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28 and 30-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 28, 30-68 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-27 of U.S. Patent No. 6,736,332.

Although the conflicting claims are not identical, they are not patentably distinct from each other because of common subject matter as follows:

Claims 28 of the instant application cites a sprinkler head comprising: a base, a nozzle assembly, an adjustable arcuate discharge orifice, a water distribution plate supported on a shaft, and an arc adjustment ring, which are fully disclosed in claim 5 of the '332 patent.

Claim 67 of the instant application cites a sprinkler head comprising: a base, an elongated stem, a nozzle and a stream deflector, a water distribution plate, and a throttle

member with flexible tabs and moving relative to a flow restriction portion, which are fully disclosed in claim 16 of the '332 patent.

Claim 68 of the instant application cites a sprinkler head comprising: a base with a nozzle, a water distribution plate, supported on a shaft, and a throttle member that move relative to a flow restriction portion, which are fully disclosed in claim 16 of the '332 patent.

3. Claims 28, 30-62, and 68 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-108 of U.S. Patent No. 6,651,905. Although the conflicting claims are not identical, they are not patentably distinct from each other because of common subject matter as follows:

Claims 28 of the instant application cites a sprinkler head comprising: a base, a nozzle assembly, an adjustable arcuate discharge orifice, a water distribution plate supported on a shaft, and an arc adjustment ring, which are fully disclosed in claim 1 of the '905 patent.

Claims 44, 53 and 68 of the instant application cite a sprinkler head comprising: a base, an elongated stem, a nozzle, a water distribution plate, an arc adjustment ring, and a throttle control member, which are fully disclosed in claim 35 of the '905 patent.

4. Claims 28, 29-68 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-31 of copending Application No. 10/634,747. Although the conflicting claims are not identical, they are not patentably distinct from each other because of common subject matter as follows:

Claims 28 of the instant application cites a sprinkler head comprising: a base, a nozzle assembly, an adjustable arcuate discharge orifice, a water distribution plate supported on a shaft, and an arc adjustment ring, which are fully disclosed in claim 13 of the '747 application.

Claims 28, 44, 53, 63, 67, and 68 of the instant application cites a sprinkler head comprising: a base, a nozzle assembly, a water distributor, an arc adjustment member, and a throttle control member with a flow restriction portion and flexible tabs, which are fully disclosed in claim 13 of the '747 application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 28, 34, 36-40, 44, 50-53, 59-62 and 68 are rejected under 35 U.S.C. 102(b) as being anticipated by Kah, Jr.

Kah, Jr. discloses a sprinkler head comprising: a base 3, a nozzle 11 supported within the base 3 and having a first component 12 and a second component 17, a water distribution plate 17 on a shaft 71, an arc adjustment ring 15/15', a throttle control member 80, and a flow restriction portion 76 (see figure 1).

***Terminal Disclaimer***

9. The application 10/634,747 and patent 6,651,905 being disclaimed has not been identified on the Terminal Disclaimer filed on 6/27/05.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinh Q. Nguyen whose telephone number is 571-272-4907. The examiner can normally be reached on Monday-Thursday 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Scherbel can be reached on 571-272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dinh Q Nguyen  
Primary Examiner  
Art Unit 3752

dqn